

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

MICHAEL BOYD  
ADC #115890

PLAINTIFF

v.

No. 4:20-cv-129-DPM-JJV

GREG RECHEIGL, Health  
Services Administrator, East  
Arkansas Regional Unit, *et al.*

DEFENDANTS

ORDER

On *de novo* review, the Court adopts Magistrate Judge Volpe's recommendation, *Doc. 59*, as supplemented and overrules Boyd's objections, *Doc. 60*. FED. R. CIV. P. 72(b)(3). In some cases, plaintiffs can recover nominal damages for violations of their rights, even in the absence of harm or injury. *Carey v. Phipus*, 435 U.S. 247, 266 (1978). In Eighth Amendment cases, though, a plaintiff must prove "pain, misery, anguish or similar harm[.]" *Cowans v. Wyrick*, 862 F.2d 697, 700 (8th Cir. 1988); *see also* EIGHTH CIRCUIT MODEL CIVIL INSTRUCTIONS 4.43 & n.5. That is because "only the unnecessary and wanton *infliction of pain*" amounts to cruel and unusual punishment. *Cowans*, 862 F.2d at 699 (quotation omitted). Boyd hasn't plausibly alleged any harm or injury resulting from Dr. Breving's medical advice — which Boyd has declined

to follow. Dr. Breving's motion to dismiss, *Doc. 49*, is therefore granted. Boyd's claim against him is dismissed without prejudice.

So Ordered.

*D.P. Marshall Jr.*  
D.P. Marshall Jr.  
United States District Judge

*1 September 2020*